Final
Permit Streamlining White Papers Project

CONCURRENT AGENCY, PUBLIC COMMENT, AND APPEAL PROCESSES: WHAT ARE THE OPPORTUNITIES FOR STREAMLINING?

WDOT00000281

Prepared For:
One Stop / Pilot Project Subcommittee
Transportation Permit Efficiency and Accountability Committee
Washington State Department of Transportation
Environmental Affairs Office
PO Box 47331
310 Maple Park Avenue SE
Olympia, Washington 98504

Prepared By:
ENVIROISSUES
101 Stewart Street, Suite 1101
Seattle, Washington 98101

June 26, 2003

Final
Permit Streamlining White Papers Project

CONCURRENT AGENCY, PUBLIC COMMENT, AND APPEAL PROCESSES: WHAT ARE THE OPPORTUNITIES FOR STREAMLINING?

WDOT00000281

Prepared For:
One Stop / Pilot Project Subcommittee
Transportation Permit Efficiency and Accountability Committee
Washington State Department of Transportation
Environmental Affairs Office
PO Box 47331
310 Maple Park Avenue SE
Olympia, Washington 98504

Prepared By:

_____
Patricia J. Serie
Principal

ENVIROISSUES
101 Stewart Street, Suite 1101
Seattle, Washington 98101

June 26, 2003

Table of Contents

LIST OF TABLES

LIST OF FIGURES

TABBED ATTACHMENTS OF SUPPORTING INFORMATION:

1- Blank Information Request Memo
2- Section 404/10
3- ESA Section 7
4- Section 401 Water Quality Certifications
5- Section 402 NPDES Stormwater Permits
6- CZM Consistency and GMA-SMA Review
7- Hydraulic Project Approval
8- Shoreline Substantial Development Permit
9- Critical Areas Ordinance

EXECUTIVE SUMMARY

BACKGROUND. Washington's Transportation Permit Efficiency and Accountability Committee (TPEAC) contracted with David Evans and Associates, Inc. (DEA) and EnviroIssues to develop this white paper analyzing the permitting process for transportation projects. The paper's objectives were to (1) identify potential concurrent agency review, public comment, and appeal opportunities for complex projects, and (2) recommend potential methods for streamlining the overall permitting process through coordinated review and other methods.

TPEAC identified approximately ten permits to review in significant detail. Three permitting scenarios are also provided to offer context for discussion:

1) The Statutory Framework: Regulations that dictate agency schedules and protocols for processing permits (Section 3);

2) The "Typical" Permitting Experience: The Washington State Department of Transportation (WSDOT) and permitting agencies provided data to help determine how actual permitting processes and schedules compare to statutory requirements (Section 4); and

3) The Hood Canal Pilot Project: WSDOT convened an Interdisciplinary Team (IDT) with representatives from several agencies in an effort to streamline project permitting (Section 5).

RECOMMENDATIONS. Based on research and analysis conducted within the context of the three scenarios above, TPEAC is encouraged to consider the following recommendations:

1) Encourage the use of a joint preapplication process
2) Explore the possibility of coordinating joint public review processes
3) Explore convening an "IDT-like" process to review and negotiate mitigation activities
4) Explore concurrent permit issuance
5) Limit time and resources focused on modifying the appeal process, as opportunities for concurrent appeal appear limited
6) Explore or expand opportunities to track permitting timeframes

In addition, TPEAC members suggested that critical path permitting timelines, requirements, milestones, contractual expectations, and role definition should be a key part of all early project activities. To aid in streamlining, agencies may wish to develop data or information lists documenting their needs for a complete application. As TPEAC considers streamlining opportunities, ensuring adequate staff resources, training programs, staff liaison positions, and communication mechanisms will also be critical to success. Finally, programmatic approaches to resolving frequently arising issues may also provide helpful streamlining opportunities.

1. BACKGROUND, PURPOSE, AND OBJECTIVES

Washington's Transportation Permit Efficiency and Accountability Committee (TPEAC) was established in 2001 pursuant to ESB 6188, the Environmental Permit Streamlining Act. The legislation's intent was to seek ways to expedite lengthy permitting processes for transportation projects throughout the state. The TPEAC group, consisting of elected officials, interest group representatives, and resource agency personnel, began its work in September 2001 and has been actively involved since that time in exploring potential streamlining approaches.

TPEAC established technical subcommittees to support its mission, including the One Stop Permitting Subcommittee and the Pilot Project Subcommittee. In late 2002, those two committees merged into today's One Stop/Pilot Project Subcommittee. Two questions on which the subcommittee sought information were 1) What opportunities existed for concurrent agency review of environmental permits; and 2) What opportunities existed for concurrent public comment and appeal on environmental permits. These questions were to be examined in the content of permit streamlining. WSDOT, as chair of the subcommittee, contracted with David Evans and Associates, Inc. (DEA) and EnviroIssues to develop this white paper analyzing the permitting process for transportation projects, identifying potential concurrent review opportunities, and recommending potential methods for streamlining the overall permitting process by coordinating reviews and conducting them in parallel.

Working with members of the One Stop/Pilot Project Subcommittee, the DEA team defined the scope of regulations to be considered, clarified the objectives for the analyses, and obtained significant help in gathering base information and data. A detailed questionnaire provided structure for agency representatives to respond to questions about their particular permitting responsibilities and processes. Participants were asked to address a hypothetical transportation project example, a bridge replacement that crosses a stream including ESA-listed fish, and abuts wetlands approaching the bridge (see Section 2). It was also assumed that the NEPA and SEPA processes had been completed for the hypothetical project. Within that context, agency experts answered questions about the scope, data requirements, review processes, and other aspects of their permitting/approval processes, and described how permitting the hypothetical project might occur. The DEA team analyzed the information provided and prepared this white paper to document each permitting process and identify potential opportunities for concurrent agency, public comment, and appeal processes. For each agency permit/approval process, the analysis addresses:

1. The official story – statutory requirements for application submittal, review, decision, and appeal.
2. The real-world story – how the permitting process, in practice, compares with statutory requirements. (Note: The "typical" timeline was based, at times, on very small data sets and anecdotal evidence, but provides an approximate – albeit not completely accurate – snapshot of how the permitting process occurs, as well as identifies important data gaps.)

3. The pilot project experience – how the Hood Canal Pilot Project permitting process played out, and how it differs from the official and typical timelines. The IDT process convened for the Hood Canal Pilot Project was an attempt to provide structured opportunities for concurrent agency review and collaboration. While Section 5 will provide general insight as to the successes and challenges faced by the IDT in terms of concurrent agency review, assessing the overall success of the IDT process is beyond the scope of this white paper. A forthcoming IDT survey and summary report specifically intended to evaluate the IDT process will contain these findings.

2. CONCEPTUAL MODEL FOR ASSESSING STREAMLINING OPPORTUNITIES

The types of projects WSDOT must permit vary widely in size and complexity, requiring many different permitting approaches. For example, between 1999 and 2001, less than 25 percent of all WSDOT projects required Section 404 permits or Section 401 Certifications, and less than 5 percent required individual Section 404 permits and 401 Certifications or water quality modifications (see table on page 22). With that perspective in mind, the committee discussed the permits with greatest relevance to typical WSDOT projects and selected the following to analyze in more detail:

- Clean Water Act Section 404 Nationwide Permits (federal)
- Clean Water Act Section 401/10 Individual Permit (federal)
- Clean Water Act Section 401 Water Quality Certification (federal, state, and tribal)
- Coastal Zone Management Concurrency (state)
- Endangered Species Act Section 7 Consultation (federal)
- Hydraulic Project Approval (state)
- Clean Water Act Section 402 NPDES Permit (state)
- Shoreline Management Act Permit (local)
- Critical Areas Ordinances (local)

For critical areas ordinances, King County was selected to profile rather than a subset of all jurisdictions in the state. King County processes many WSDOT projects because of its location and its critical areas ordinance is considered one of the more comprehensive. In that respect, King County represents one end of the spectrum in assessing opportunities for streamlining.

To facilitate thinking about the range of permitting requirements of interest to WSDOT, a hypothetical bridge replacement project, sufficiently complex to trigger several common permits, was conceived. The hypothetical bridge project links two counties, is partly within city limits,

crosses an ESA-listed water body, and is within a floodplain. Figure 1 illustrates the conceptual model developed to illustrate the range of permits and approvals needed for such a project. As shown, there is a distinct layering of federal, state, and local permitting requirements at key points within the landscape. Figure 2 is an illustration of jurisdictional boundaries covered by two permits administered by the Army Corps of Engineers – Section 404 and Section 10.

The analysis does not include the NEPA or SEPA processes, although they are considered. It is worth noting that, according to WSDOT's figures, the agency's projects fall into the following categories (www.fhwa.dot.gov/environment/strmlng/projectgraphs.htm):

92 percent – categorical exclusion or exemption

7 percent – environmental assessment

1 percent – environmental impact statement

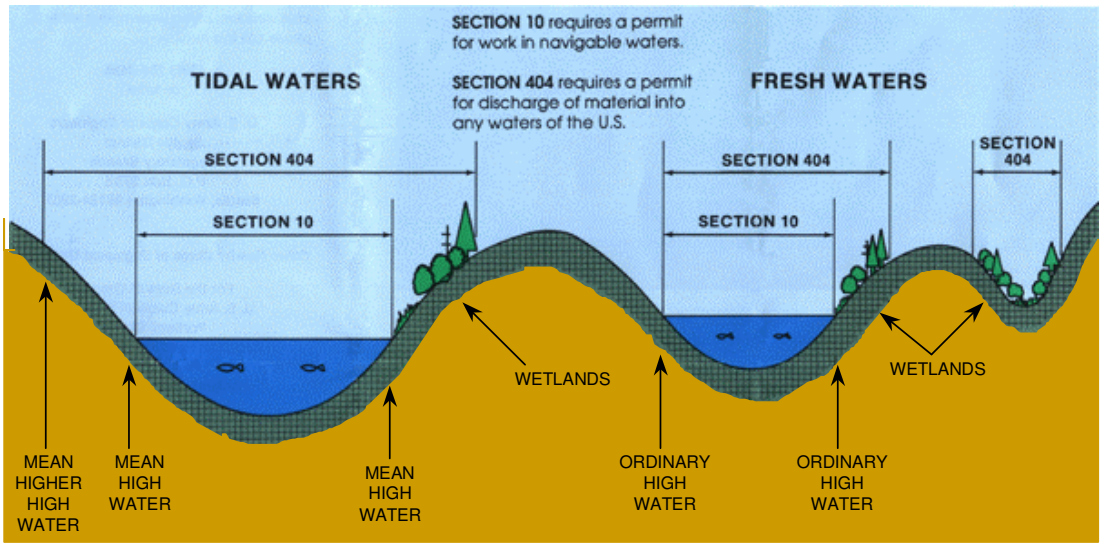
These data illustrate that the majority of WSDOT projects do not have significant impacts and do not require complicated permits. The smaller percentage of projects that generate complex environmental issues consume significant staff resources and cause delays in schedule. Streamlining may provide significant benefits to these larger, complex projects, which are the principal focus of this white paper.

The analysis began with the development of permit timelines. To determine if concurrent agency review was possible, it was important to establish when each agency conducted its review. While there may be other barriers to concurrent review, not having the review process aligned in time was clearly one. In the course of developing the timelines, additional information on permit processing was gathered relevant to the question of concurrent review.

Section 3 presents the information about statutory and regulatory requirements and associated timelines to provide a baseline for further analysis. Section 4 presents the results of discussions with WSDOT and regulatory/resource agency personnel about the typical implementation of permitting processes and their associated timelines. In Section 5, the experiences and lessons learned in implementing the Hood Canal Pilot Project are compared with both statutory and typical timelines. Finally, Section 6 contains conclusions about the feasibility of concurrent review processes, and the team's recommendations about opportunities to streamline the regulatory process.

Figure 1: Hypothetical Bridge Replacement

Figure 2. Corps Jurisdictional Boundaries



Source: US Army Corps of Engineers

Notes and Caveats About Permit Timelines: Three timelines are presented in the following sections to graphically illustrate permitting processes and schedules.

- *Figure 3 – Statutory Permit Timeline* presents legally mandated processes and timelines identified for each permit. The complexity of different permitting processes could not always be easily captured in the simple graphic format, so each permit is also described in more detail in the text and footnotes of Section 3.
- *Figure 4 – Typical Permit Timeline* attempts to capture anecdotal information and data about how long it currently takes to obtain permits given real-world opportunities and limitations. In many cases, timelines for permits were generated from very small data sets or generalized ideas from agency staff. Please read the description of data sources provided in Section 4 carefully to more fully understand the kind, amount, and potential accuracy of information displayed. Also note that the label "typical" is in some ways inaccurate, as size, location, and complexity of WSDOT projects vary widely.

- *Figure 5 – Hood Canal Pilot Project Timeline: Bridge, Ferry Terminals, and Graving Dock* charts the actual dates of the permitting process throughout the pilot project's streamlining effort.

Each individual timeline provides the opportunity to scan vertically to identify how certain permits are or might be aligned to achieve concurrent agency review, public comment, and appeal processes. In addition, all three are presented in the same scale and colors to allow rough comparisons between each. Please recognize that permitting processes can be complex. Attempts to simplify the timelines for general purposes at times compromise their complete accuracy. Please refer to the text for more in-depth and accurate descriptions of the information displayed in the figures.

3. ANALYSIS OF STATUTORY PROCESSES AND TIMELINES FOR TRANSPORTATION REGULATORY FRAMEWORK

The hypothetical project conceived for this analysis would require a suite of permits and approvals from federal, state, and local authorities. These permits can, in many ways, be interdependent, requiring similar information and analysis from applicants, and are oftentimes contingent on other jurisdictional decisions (e.g., federal 404 permits can require state-administered 401 Water Quality Certification prior to approval). This analysis assumes NEPA/SEPA determination has been made, a preferred alternative selected, and design completed to the 30 to 80 percent range before beginning permitting.

This section provides statutory information about relevant permits in order to create a baseline for analyzing the success of the Hood Canal Pilot Project streamlining efforts, and for identifying common delays in the real-world, multi-step process of project approval. *Figure 3 – Statutory Permit Timeline*, provides a graphical depiction of the permitting process, including agency, public, and appeal process durations. Each permit is also described in more detail below to help clarify the information portrayed in the figure.

Throughout this analysis, repeated reference is made to Washington's Joint Aquatic Resources Permit Application (JARPA) form, which can be used to apply for a variety of local, state, and federal permits. The following table lists the jurisdiction and applicable permits included in the JARPA.

Table 1. Permits and Jurisdictions Included in JARPA

Jurisdiction	Permit/Approval
Local Governments	Shoreline Management Permits (including Substantial Development, Conditional Use, Variance, Exemption, Revision, and Floodplain Management, and Critical Areas Ordinance)
Washington Department of Fish and Wildlife	Hydraulic Permit Approvals
Washington Department of Ecology	401 Water Quality Certification
Washington Department of Natural Resources	Aquatic Resources Use Authorization Notification
U.S. Army Corps of Engineers	Section 404 and Section 10 Permits
Coast Guard	General Bridge Act Permit

For WSDOT projects, applicants can also indicate if the project will be designed to meet the most current Ecology/WSDOT Water Quality Implementing Agreement.

A. SECTION 404 NATIONWIDE PERMITS

U.S. Army Corps of Engineers (Corps)

Purpose. Nationwide permits (NWPs) are general permits issued by the Corps Chief of Engineers and are designed to regulate certain activities having minimal impacts with little, if any, delay or paperwork. The NWPs are proposed, issued, modified, reissued (extended), and revoked from time to time after an opportunity for public notice and comment. [33 CFR Part 330.1(b)]

Agency Review Process. The Corps has technically already issued NWPs; therefore, an applicant must simply demonstrate compliance with a NWP and receive Corps approval (although some NWPs are approved automatically). Permits must be NEPA-compliant, and most decisions on a permit application require either an accompanying environmental assessment (EA) or environmental impact statement (unless the permit is included within a categorical exclusion). In Washington, NWPs are included as part of the JARPA, a system designed to allow applicants to batch permit applications and trigger (to the extent possible) concurrent permit review periods.

Applicants are encouraged, but not required, to engage in pre-application consultation with the Corps prior to submitting a NWP application. By doing so, the Corps can sometimes identify a more appropriate NWP for the activity in question, and can assure the submission of a complete application. Upon receipt of a permit application, the Corps has 15 days to determine if the application is complete [33 CFR 325.2(a)(1)]. If the application is deemed complete, the Corps district engineer (DE) has 45 days to determine whether the activity meets the federal criteria and any applicable regional conditions for authorization (unless a related comment period is extended or more information is needed). The 45-day review period begins upon receipt of a complete application, which is triggered when the permit is received (not when the DE declares completeness). If the NWP is partially denied based on the need for 401 Certification, the DE forwards the NWP to the Department of Ecology (Ecology) for approval, conditioning, or denial.

Figure 3: Statutory Permit Timeline

The DE can make a decision on the permit application even if other agencies with jurisdiction have not yet granted their authorizations, except where such authorizations are, by law, a prerequisite for a decision. For example, the NWP's National Regional Condition 11 states that no activity is authorized under any NWP until ESA requirements have been satisfied. In other cases, permits can be conditioned to require other agency authorization or concurrence prior to commencing activities.

Public Review. Public review and comment are not required as part of the NWP program, unless 401 certification is denied and the Washington Department of Ecology (Ecology) requires public notice. Public comment is solicited when new NWPs are proposed, or existing permits are being modified or reissued (NWPs are reissued approximately every five years).

Appeal Process. The appeal process associated with the NWP program is designed for permit applicants, *not* members of the public wishing to contest a Corps decision. An applicant may only appeal on two grounds: (1) the denial of their NWP application, or (2) whether the Corps has jurisdiction over the particular activity for which the NWP is being sought. An applicant may not appeal a condition of a NWP. Public recourse can only be sought through litigation against the Corps in federal court.

To appeal a permit decision, the applicant must file a Request for Appeal (RFA) within 60 days of the notice of appealable action (e.g., a permit denial). The DE then has 30 days to accept the RFA or ask for changes. Once the RFA is accepted, an appeal conference is held within 60 days (the appellant is notified at least 15 days in advance). The DE must decide on the appeal within 90 days (or within 30 days of a site visit if the site visit is delayed). Decisions may be appealed judicially after administrative remedies have been exhausted.

B. SECTION 404/10 INDIVIDUAL PERMITS

U.S. Army Corps of Engineers (Corps)

Purpose. Individual permits are issued to applicants wishing to gain approval for activities under Corps jurisdiction but not covered by general permits issued through the 404 NWP program.

Agency Review Process. Applicants are encouraged, but not required, to engage in pre-application consultation with the Corps prior to submitting an application for an individual permit. By doing so, the Corps can sometimes identify an appropriate NWP to cover the activity. Individual permits are included as part of the JARPA.

Upon receipt of a permit application, the Corps has 15 days to determine if the application is complete [33 CFR 325.2(a)(1)]. If the application is deemed complete, the Corps DE has 60 days to issue, condition, or deny the permit, unless the project is particularly complex or the comment period is extended (see *Public Review*). The 60-day review period begins upon receipt

of a complete application, which is triggered when the permit is received (not when the DE declares completeness).

An individual 404 permit cannot be granted until 401 water quality certification is obtained or waived. In the case of 404 individual permits, the DE forwards the required public notice to the Ecology to officially trigger the 401 certification review process [33 CFR 325.2(b)(1)]. (The applicant may also trigger the review process by submitting their completed JARPA to Ecology.) Section 10 activities do not require 401 Certification. Other laws may also require procedures that may prevent DEs from deciding on certain applications within 60 days (e.g., the Coastal Zone Management Act, NEPA, National Historic Preservation Act, Wild and Scenic Rivers Act, and Marine Protection, Research and Sanctuaries Act). For example, if a Coastal Zone Management Act (CZMA) consistency determination were required, the applicant would need to submit a certification of compliance with the CZMA, which the DE would then forward to Ecology for concurrence [33 CFR 325(b)(2)]. DEs can make public interest determinations prior to other agency authorizations, if such authorizations are not pre-requisites, by conditioning an issued permit.

Public Review. The Corps must also issue a public notice in their jurisdictional areas and to interested parties announcing a 15- to 30-day comment period within 15 days of receiving a complete application, depending on the nature of the activity. If an activity is particularly complex, the Corps may lengthen the public comment period by an additional 30 days, which would suspend the agency's review period for that amount of time (i.e., the 30 days would not count against the Corps' mandated 60-day review period).

Appeal Process. The appeal process associated with individual Corps permits is designed for permit applicants, *not* members of the public wishing to contest a Corps decision. An applicant may appeal on three grounds: (1) conditions placed on an individual 404 permit, (2) denial of a permit, or (3) whether the Corps has jurisdiction over an activity for which a permit is being sought. The appeal process and schedule is identical to that described under the 404 NWP (see above). Public recourse can only be sought through litigation against the Corps in federal court.

C. SECTION 401 WATER QUALITY CERTIFICATION

Washington State Department of Ecology (Ecology)

Purpose. In Washington State, four agencies oversee the 401 certification process: the Puyallup and Chehalis tribes on their respective reservations, EPA on some federal lands, and Ecology on all non-federal lands. Section 401 provides states, EPA, and tribes the opportunity to play a more active role in making decisions that protect waters of the state, including wetlands. Through Section 401, states, EPA, and tribes can approve, condition, or deny all federal permits or licenses that might result in a discharge to a state, federal, or tribal water, including wetlands. The major federal licenses and permits subject to Section 401 are Section 402 and 404 permits, and Federal Energy Regulatory Commission (FERC) hydropower licenses. States, EPA, and

tribes make their decisions to deny, certify, or condition permits or licenses primarily by ensuring the activity will comply with State water quality standards. In addition, states, EPA, and tribes look at whether the activity will violate effluent limitations, new source performance standards, toxic pollutants, and other water resource requirements of state/tribal law or regulation.

Agency Review Process. If the 401 review process is triggered by the partial denial of a 404 NWP application, Ecology has up to 180 days to issue a Letter of Verification (LOV) or individual 401 decision (401 certification is not needed if Ecology issues a LOV under the NWP program). If the 401 review process is triggered by a 404 individual permit, Coast Guard permit, or other federal permit or license, Ecology opens a 20-day (minimum) public notice and comment period (unless the Corps has already done so). Ecology has up to one year to approve, condition, or deny the permit.

Public Review. Public notification is required if an individual 401 certification process is triggered by a 404 NWP. When triggered by a 404 individual permit, Ecology opens a 20-day public notice and comment period. For individual 404 permits, the Corps' Public Notice serves as a joint notice (as long as the Corps attaches Ecology's notice of Public Notice). Ecology may also potentially hold a public meeting or hearing.

Appeal Process. An applicant or other parties may appeal a 401 Water Quality Certification decision or condition to the State's Pollution Control Hearings Board (PCHB) within 30 days of Ecology's decision. The PCHB may not hear the case for six or more months.

D. COASTAL ZONE MANAGEMENT ACT CONCURRENCE[1]

Washington State Department of Ecology

Purpose. The Coastal Zone Management Act (CZMA), passed in 1972, encourages the appropriate development and protection of the nation's coastal and shoreline resources. Under Washington's Coastal Zone Management Program (federally approved in 1976 and administered by Ecology within the 15 Coastal Counties[2]), activities affecting any land use, water use, or natural resource of the coastal zone must comply with six laws, called "enforceable policies." These include the Shoreline Management Act and local master programs, State Environmental Policy Act (SEPA), Clean Water Act, Clean Air Act, Energy Facility Site Evaluation Council policies, and the Ocean Resources Management Act. Activities and development affecting coastal resources involving the federal government evaluate compliance through a process called

[1] Text largely drawn from Washington State Department of Ecology's "Focus: Washington's Coastal Zone Management Program Federal Consistency," Publication #00-06-006, June 2001.

[2] Washington State's coastal zone includes the 15 counties with marine shorelines (Clallum, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom), and includes all lands and waters from the coastline seaward for three nautical miles. For areas adjacent to the ocean, the coastline is defined as the position of ordinary low water, and for inland marine waters, as the seaward limit of rivers, bays, estuaries, or Sound.

"federal consistency." The process allows the public, local governments, tribes, and State agencies an opportunity to influence federal actions likely to affect Washington's coastal resources or uses.

Agency Review Process. A federal agency cannot approve or fund any activity unless Ecology concurs that the project is consistent with the federally approved Coastal Zone Management program. While actions undertaken by federal agencies must only demonstrate consistency with the Coastal Program's six enforceable policies, federally approved or funded projects must be entirely compliant with the six laws.

In the case of a federal action, the federal agency must review the activity for compliance with the six laws and prepare a "federal consistency determination." If it is determined that coastal resources will be impacted, the agency must also provide a statement that the activity is consistent to the maximum extent practicable with the six laws. Ecology then has 60 days to concur or object, in writing, with the determination of impact to coastal resources and consistency with the six laws.

In the case of an activity requiring federal approval (such as Section 404 and 10 permits) or receiving federal funding, the applicant reviews the activity for compliance with the six laws and prepares a "federal consistency determination form." The form describes the activity and whether the activity impacts coastal resources. If the activity impacts coastal resources, a statement must be provided that the activity is compliant with the six laws. In the case of Corps permits, the applicant forwards their certification to the Corps and Ecology. For all other federal permits, the applicant submits their certification directly to Ecology. Ecology has six months from the receipt of the certification to concur with or deny it. If Ecology fails to act within six months, concurrence is presumed.

In the case of activities that will receive a federal loan or grant, applicants must prepare a "federal consistency certification" as described above and submit it directly to Ecology. Ecology has six months from receipt of the certification to concur with or deny it. If Ecology fails to act in six months, concurrence is presumed. The applicant then provides the federal funding agency with Ecology's decision.

Public Review. Shoreline permits and some Corps permits include independent public involvement requirements, which are deemed adequate for determining consistency with the Coastal Zone Management Act. For projects not required to provide a public involvement process through shoreline or Corps permits, or for large, complex, and controversial projects, Ecology has developed a separate public involvement process. This involves public notice, a 21-day public comment period, and potentially a public meeting or hearing. Notification is sent to interested parties based on the development of general and project-specific mailing lists.

Appeal Process. No public appeal process is specified for CZMA concurrency determinations (concurrency is usually required as a component for other permits, which often offer public appeals processes). An applicant may appeal Ecology's concurrency/consistency decision within

30 days to the Secretary of Commerce in accordance with Title 15, Chapter IX, Part 930.125 CFR.

E. ENDANGERED SPECIES ACT SECTION 7 CONSULTATION[3]

U.S. Fish and Wildlife Service and NOAA Fisheries

Purpose. Section 7 of the ESA charges federal agencies to aid in the conservation of listed species. Section 7(a)(2) requires federal agencies to consult with the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration (NOAA) Fisheries (known collectively as the Services) to ensure actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of listed species or adversely modify designated critical habitats.

Agency Review Process. To comply with Section 7, the federal action agency or its non-federal permit applicant must ask the Services to provide a list of threatened, endangered, proposed, and candidate species and designated critical habitat that may be present in the project area. If the Services determine no species or critical habitats are present, then the federal action agency has no further ESA obligation under section 7(a)(2).

If a species is present, then the federal action agency must determine whether the project *may affect* a listed species. If so, consultation is required. If the action agency determines (and the Services agrees) that the project *does not adversely affect* any listed species, then the consultation (informal to this point) is concluded and the decision is put in writing (within 30 days of the conclusion of informal consultation).

If the federal action agency determines a project *may adversely affect* a listed species or designated critical habitat, a formal consultation is required. There is a designated period of time in which to consult (90 days). Beyond the initial time period, the Services are allotted an additional 45-day period to prepare a biological opinion (50 CFR 402.14). The determination of whether or not the proposed action would be likely to jeopardize the species or adversely modify its critical habitat is contained in the biological opinion. If a *jeopardy* or *adverse modification* determination is made, the biological opinion must identify any *reasonable and prudent alternatives* that could allow the project to move forward.

Although consultation should conclude within 90 days, an applicant may consent to a 60-day extension. The consultation period can be further extended with applicant consent. Approval must be provided in writing for both informal and formal consultations.

WSDOT, the Federal Highway Administration (FHWA), and the Services are currently developing a multi-agency rapid response decision-making process associated with ESA

[3] Text largely drawn from U.S. Fish & Wildlife Service's "Consultation with Federal Agencies: Section 7 of the Endangered Species Act," found at http://endangered.fws.gov/consultations/consultations.pdf on May 22, 2003.

compliance for transportation projects in Washington State. Agencies recognize that salmon recovery, the safety of the traveling public, and the state's economic well-being depend upon officials at transportation and resource agencies working cooperatively to solve problems. This often involves addressing complexities inherent in multi-dimensional goals established under different statutes, rules, regulations, and guidance documents.

The "Four Corners Management Approach," which involves the four agencies involved in transportation-ESA decision making, establishes executive oversight over the decision making process concerning program implementation that effects each agency. Under the approach, two-tiered decision making teams (including executive and mid-manager level staff representing each agency) will meet once a month to resolve outstanding issues.

Public Review. There are no public notification or review requirements associated with Section 7 consultation.

Appeal Process. There is no formal appeal process identified in association with the Section 7 consultation process.

F. HYDRAULIC PROJECT APPROVAL

Washington State Department of Fish and Wildlife (WDFW)

Purpose. Hydraulic Project Approvals (HPAs) provide the Washington State Department of Fish and Wildlife (WDFW) the opportunity to impose a statewide system of consistent and predictable rules to provide protection for all fish life in the state. An HPA must be obtained for the construction of hydraulic project(s) or performance of other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. [Chapter 77.55 RCW, 220-110 WAC]

Agency Review Process. WDFW will grant or deny approval of an HPA within 45 calendar days of receiving a complete application and notice of compliance with any applicable SEPA requirements. The 45-day period can be suspended if, after 10 working days of receipt of the application, (1) the applicant remains unavailable or unable to arrange for timely field evaluation, (2) the site is physically inaccessible for inspection, or (3) the applicant requests the delay. If the 45-day period is suspended, WDFW notifies the applicant in writing about the reasons for the delay. WDFW may accept written or verbal requests for time extensions, renewals, or alterations to an existing HPA.

An HPA approval is given by the applicant contact, usually a WDFW area habitat biologist. Approved permits span up to a 5-year period, after which the applicant must re-apply. The permittee must demonstrate substantial construction progress on the portion of the project related to the HPA within 2 years. The permit may also be kept in draft format and made final at the permittee's request if the project is expected to span beyond the 5-year period. Permits are

denied when the project results in direct or indirect harm to fish life, unless adequate mitigation can be assured by conditioning the HPA or modifying the proposal.

Public Review. Other than the public review process mandated by SEPA, there is no public review process specified. For most (90 percent) of the projects, the SEPA Determination of Non-significance is the only public notice given. On larger projects that involve a NEPA document or SEPA EIS, public meetings are required during the documentation process.

Appeal Process. Appeals are heard by an Administrative Law Judge, or by the Hydraulic Appeals Board, which includes the Director of Ecology (or designee), the Director of the Department of Agriculture (or designee), and the director (or designee) of the department whose action is appealed (the venue for a formal appeal is set in the statute). The applicant, the agent for the applicant, or a third party can informally or formally appeal an HPA decision. An informal or formal appeal must be requested within 30 days of the date:

- An HPA is issued, conditioned, or denied; or
- An order imposes civil penalties.

Formal appeals can also be requested within 30 days of:

- Any other "agency action" for which an adjudicative proceeding under the HPA occurs;
- WDFW's written response to an informal appeal, if the HPA is denied; or
- An HPA issuance or conditioning according to the terms of the informal appeal process.

Issues to be addressed during informal appeals include issuance or denial of an HPA, revisions of an HPA, or an order imposing civil penalties. Formal appeals/discussions may also address an "agency action" for which an adjudicative proceeding occurs. WSDOT projects undergo dispute resolution before an appeal is filed. WDFW has 60 days to respond to informal appeals, which may be suspended by written agreement if informal discussions are ongoing.

G. SECTION 402 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT[4]

Washington State Department of Ecology

Purpose. Ecology administers the NPDES permit program, a system of general and individual permits for the discharge of pollutants and other wastes and materials to surface waters of the state. No pollutants may be discharged to any surface water from a point source, unless

[4] Text and information from, in part, the Washington Department of Ecology's "Guidance Document for Applying for Ecology's General Permit to Discharge Stormwater Associated with CONSTRUCTION Activity," Publication no. 99-37, Revised July 2001.

authorized by an individual or general NPDES permit. A general permit to discharge stormwater associated with a construction activity (the appropriate permit for WSDOT's example bridge project), must be obtained for projects with a potential to cause an environmental impact to surface waters of the state.

Agency Review Process. The applicant must apply under the general construction permit 38 to 60 days prior to any clearing, grading, excavating, and/or demolition activities. The Notice of Intent (NOI), a simple three-page form containing project information, serves as the official permit application. Prior to submitting the NOI, the applicant should develop a Stormwater Pollution Prevention Plan (SPPP), assure compliance with SEPA, and submit the NOI and a draft public notice for review by Ecology. Permit approval is not granted until the close of a 30-day public comment period (see below).

If Ecology determines a discharger should not be covered under a general permit, the agency has 60 days from receipt of the application to notify the applicant in writing and request modifications to the activity or require an individual NPDES permit.

Public Review. As part of the application process for general construction permits, an applicant is required to publish a public notice (that has been reviewed by Ecology) in a newspaper distributed in the county where the construction will take place. The notice must be published once each week for two consecutive weeks. The notice officially opens a 30-day comment period. Permit coverage will not be granted sooner than 31 days from the date of the second public notice, a minimum of 45 days from the initial application.

Appeals Process. Applicants and other parties may file appeals with the Pollution Control Hearings Board within 30 days of a notice of decision. Parties may request a pre-hearing settlement conference. The PCHB determination may be appealed to superior court.

H. SHORELINE SUBSTANTIAL DEVELOPMENT PERMITS[5]

Local Jurisdictions and Washington State Department of Ecology

Purpose. The Shoreline Management Act (adopted by Washington State in 1972) is intended to "prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The SMA creates a balance of authority between the State and local jurisdictions. Ecology is responsible for providing assistance to local government and insuring compliance with the SMA. In general, local governments are responsible for administering the regulatory program, including establishing a permitting system for shoreline development. Local jurisdictions forward their permit decisions to Ecology for filing (and, in the case of Conditional Use and Variance permits, final review and approval). Substantial Development Permits (SDPs) are needed for projects costing more than $5,000, or those that materially interfere with normal

[5] Text and information from the Washington Department of Ecology's "Introduction to Washington's Shoreline Management Act (RCW 90.58)", Ecology Publication 99-113, December 1999.

public use of the water or shorelines of the state. Some projects also require Shoreline Conditional Use permits or Shoreline Variance Permits in addition to the SDP. These are processed concurrently and are generally treated as one complete package. Under certain circumstances, the Shoreline Management Act exempts certain developments from the need to obtain an SDP, but not from compliance with applicable policies and regulations.

Agency Review Process. The shoreline process begins with the local jurisdictions, whose review process is tied to the Growth Management Act (GMA) schedule specified at RCW 36.70B. The process begins with a required pre-application consultation between the applicant and the local jurisdiction with shoreline oversight authority. Upon submission of a Shoreline application, the local jurisdiction has 28 days to determine application completeness. Determination of application completeness triggers a 120-day local agency review period.

Once the local agency makes a permit decision, they file the permit with Ecology. Shoreline SDPs are filed on the date of receipt by Ecology without further review. (Because Ecology approves local Shoreline Master Programs, the agency relies on local jurisdictions to assure compliance with applicable laws and policies.) Ecology has up to 30 days to review Conditional Use and Variance permits and issue a final decision. Conditional Use and Variance permits are filed on the date Ecology's decision letter is mailed. Filing a shoreline permit triggers a 21-day statutory appeal period. Ecology attempts to provide notice of filing letters for SDPs within 7 days of receipt. A shoreline specialist, who works with local planners, determines if the local action is consistent with the local master program and the SMA. The shoreline specialist then forwards the recommendation to a supervisor with signature authority for final approval.

Public Review. Upon determining that a Shoreline permit is complete, the local jurisdiction provides a 17-day public notice period, followed by a 21-day public comment period. Public notice and comment periods run concurrent to the local jurisdiction's application review process.

Appeal Process. During the 21-day statutory appeal period at the state level, anyone (without the need for "standing" with the court) can file a petition for review with the Shorelines Hearing Board (RCW 90.58.180). The Shorelines Hearing Board then has 180 days to reach a decision beyond the petition filing date.

I. CRITICAL AREAS ORDINANCE

Local Jurisdictions (King County as example)

Purpose. Critical areas ordinances (CAOs) are local policies and development regulations intended to protect the functions and values of critical areas by avoiding or, in appropriate circumstances, minimizing, rectifying, reducing, or compensating for impacts arising from land development and other activities affecting wetlands, fish and wildlife habitat, frequently flooded areas, aquifer recharge areas, and geologically hazardous areas. Compliance with CAOs is often incorporated as a component of land use permits granted by local jurisdictions.

Agency Review Process. In King County, an applicant must submit an Affidavit Concerning Sensitive Areas Compliance with land use permit applications. The affidavit is then reviewed as part of the application package. Please see the local timeline described under Shoreline SDPs for an example of the general steps and timeframes associated with CAOs.

Public Review. Upon determining that a land use permit application is complete, the county provides a 17-day public notice period, followed by a 21-day public comment period. Public notice and comment periods run concurrent to the county's application review process.

Appeal Process. Local jurisdictions have developed different appeal processes for land use permits, of which the CAO is a part. In general, permit approvals are followed by a 14-day local appeals process. However, some jurisdictions have chosen to eliminate local appeal process and have any appeals forwarded directly to the Shoreline Hearings Board. Some local jurisdictions also require that appellants have "standing," which may require that they have participated in the permitting process (e.g., submitted comments, etc.).

4. ANALYSIS OF TRANSPORTATION PROJECT PERMITTING EXPERIENCES

The statutory framework for permitting WSDOT projects presented in Section 3 defines the basic steps, requirements, and timelines that apply from a regulatory perspective. However, the experiences of applicants and agencies often differ from the basic statutory frameworks (some proving to be significantly shorter, others extending months beyond regulatory timelines). Anecdotal information abounds about how and why permits vary from the statutory timeline, with reasons including project size and complexity, availability and application of resources, the level of communication and coordination, and institutional attention focused on the project.

The intention behind creating a "typical" timeline was to identify the critical path for permitting complicated projects. In other words, are some permits being delayed due to one particularly lengthy permitting timeline, and are there efficiencies that could be gained through a coordinated approach to agency review, public review, or appeals that would shorten this critical path? As previously stated, *Figure 4 – Typical Permit Timeline* attempts to capture anecdotal information and data about how long it actually takes to currently obtain permits given real-world opportunities and limitations. Research for this analysis revealed that there are significant gaps in the hard data available about permit timelines for WSDOT projects. Also note that the label "typical" is in some ways inaccurate, as size, location, and complexity of WSDOT projects vary widely (i.e., it is impossible to define a "typical" project).

Information is provided below about each of the permits explored, and the kinds of data used to generate the "typical" permit timeline. Please note that in cases where there are very few data

points, the accuracy of the timeline diminishes. More might be revealed about data gaps that could be filled, rather than the actual average processing time.

- Section 404 NWP: The Corps maintains a permit tracking system, although data gaps exist within the database. A total of 55 data points were used to generate the 404 NWP timeline.6
- Section 404 Individual Permits: The Corps maintains a permit tracking system, although data gaps exist within the database. Only two data points were available to generate the Section 404 Individual Permit timeline. Completeness review ranged from 36 to 561 days (not reflected on the timeline due to the wide disparity of time periods).7
- Section 10 Permit: The Corps maintains a permit tracking system, although data gaps exist within the database. Only two data points were available to generate the timeline.[8]
- Section 401 Water Quality Certification: Ecology's Water Quality program uses the Water Quality Permit Life Cycle System (WPLCS) database to track historical 401 data, though this information has not been obtained. An Ecology representative provided an estimation for timelines associated with 401 certification triggered by 404 NWP and individual permits. Staff at the Office of Regulatory Assistance also estimated that making a 401 Water Quality Certification decision for a partially denied 404 NWP usually takes a few days to a few weeks, while a decision takes about three months if the process is triggered by a 404 Individual Permit.[9]

Ecology supplied data on the percentage of WSDOT projects between 1999 and 2001 that required Section 401 certifications.

Table 2. Ecology's 401 Certification Performance for WSDOT Projects[A]

	Number	Percent of all WSDOT Projects	Percent of Certified WSDOT Projects
Total Number of WSDOT Projects[B]	383	NA	NA
WSDOT projects that **did not** require 401 certification	293	76.50%	NA
WSDOT Projects requiring 401 Certification	90	23.50%	NA
WSDOT Projects covered under nationwide Corp's permits	80	NA	88.89%
WSDOT Projects requiring individual 401 certifications	5	NA	5.56%
WSDOT projects needing WQ modifications	5	NA	5.56%

A. Information on 401 certifications is based on hard copy records and should be very close to the actual numbers between January 1999 and December 2001.
B. The total number of WSDOT projects is based on the number of projects with an ad date between January 1, 1999 and December 1, 2001 and are taken from WSDOT's project tracking spread sheet. This is an estimate since there is not an exact correlation between the number of projects going to ad and the number of projects actually constructed due to time lag between advertisement and actual construction.

[6] Data sources: (1) Manning, Sandra, Ecology Environmental Liaison to DOT, conversation on 6/16/03, (2) Michelle Walker, ACOE, email dated 5/27/03, and (3) Becky Michaliszyn, WSDOT, email dated 6/2/03.
[7] Data source: Michelle Walker, ACOE, email dated 5/27/03.
[8] Data source: Michelle Walker, ACOE, email dated 5/27/03.
[9] Sources: (1) Phone conversation with Randi Cole, Ecology's Office of Regulatory Assistance, 5/9/03 and (2) Hood Canal Project, "Water Quality Certification and Coastal Zone Management, Docket #03SEAHQ-5485," issued May 5/28/03.

Figure 4: Typical Permit Timeline

- CZM Concurrency: Ecology is in the process of developing a tracking system for CZM concurrency determinations. The Hood Canal Pilot Project's actual timeline was used as the sole data point for the typical timeline.[10]
- ESA Section 7 Consultation: Informal consultation averaged 156 days for USFWS and 187 days for NOAA Fisheries. Formal consultation averaged 211 days for USFWS and 366 days for NOAA Fisheries. Averages were calculated based on more than 200 Biological Assessments, and the lengthier timeline provided above is used in Figure 4.[11]
- Hydraulic Project Approval – WDFW estimates a 15-day average time for completeness review on WSDOT projects (this anecdotal data is not actually tracked), with internal guidance for staff to assess applications for completeness within 10 working days of receipt. HPAs are issued/approved by the applicable Area Habitat Biologist. They have 45 days to issue or deny the HPA after a complete application. For 1999-2002, of 813 HPAs, 57 percent were issued in less than 10 days, 72 percent in less than 20 days, and 88 percent were issued in less than 30 days.
- NPDES Permits: Ecology is in the process of developing a permit tracking system for NPDES general permits. Ecology supplied data on the percentage of WSDOT projects between 1999 and 2001 that required NPDES permits.

Table 3. Ecology's NPDES Permitting Performance for WSDOT Projects

	Number	Percent of all WSDOT Projects	Percent of Permitted WSDOT Projects	Average Time to Permit[B]
Total Number of WSDOT Projects[A]	383			NA
WSDOT Projects requiring 402 permit	55	14.36%		
WSDOT projects not requiring NPDES permit	328	85.64%		NA
WSDOT Projects requiring 402 permit covered under the construction Stormwater GP	53	13.84%	96.36%	44.2 days
WSDOT Projects requiring individual 402 Permits[C]	2	0.52%	3.64%	

A.The total number of WSDOT projects is based on the number of projects with an ad date between January 1, 1999 and December 1, 2001 and are taken from WSDOT's project tracking spread sheet. This is an estimate since there is not an exact correlation between the number of projects going to advertisement and the number of projects actually constructed due to time lag between advertisement and actual construction.

B. The average time to permit is the time from submittal of a completed application to the date of permit issuance. This time period includes the required 7 day publication requirement and the 30 day public comment period. Excluding the publication and public comment periods from the time to permit results in an average permit processing time of just over 6 days.

C. The two WSDOT projects that were permitted using individual permits are the Sunset Interchange in King County and the second Tacoma Narrows Bridge. To avoid project delays the Sunset Interchange project was temporarily covered under the Construction Stormwater General Permit while an individual permit was being written. The total elapsed time for the sunset bridge permit from pre-application discussions to the issuance of the individual permit was less than 6 months.

- Shoreline Substantial Development Permits: King County provided, as an example, timelines for several of its shoreline and critical areas approval processes for WSDOT

[10] Data source: Hood Canal Project, "Water Quality Certification and Coastal Zone Management, Docket #03SEAHQ-5485," issued 5/28/03; one data point.
[11] Data source: Ben Brown, WSDOT, email dated 5/29/03.

projects. Substantial variation exists, depending on each project's complexity and issues. For example, the SR 202 Rutherford Creek project, a medium project overlay and box culvert replacement, obtained permits within three months. SR 169 at S.E. 400th, a medium project for an intersection upgrade, took about 12 months from pre-application until permit issuance. SR 18, 188th to Maple Valley, a large highway expansion project with two overpasses, took from December 1997 until November 2001 to issue county shoreline and critical area approvals. Another project on SR 18, from Maple Valley to Hobart, was similarly complex, and took even longer – starting with preapplication in 1998, followed by a supplemental EIS, and final permit issuance in March 2003 (a period of more than four years). King County's dedicated liaison program with WSDOT helps most projects move through permitting more quickly and smoothly, but even operational structure cannot avoid delays when complex project issues arise. Issues raised in many of these permits included, among others, detention pond designs, property purchases, redesign of project segments, historic properties, fisheries, and tribal input delays.

- Critical Areas Ordinance: The King County Department of Development and Environmental Services provided four data points to generate the permit timeline.[12]

Attempts to complete a "typical" timeline proved to be more difficult than expected and yielded few concrete conclusions for analysis. Several permits took longer than their statutes allows, potentially due to (1) delays in processing because of incomplete information or project modifications, (2) insufficient agency staff resources to handle permitting backlogs, or (3) an insignificantly robust data sample to accurately convey real world timelines. Most importantly, this exercise revealed that significant gaps exist in permit data being maintained. Improving or expanding permit databases will help policy makers and regulators create a baseline against which to measure future streamlining progress.

5. A REAL-WORLD EXAMPLE – HOOD CANAL PERMITTING PROJECT EXPERIENCES

As required by the Environmental Permit Streamlining Act, TPEAC approved three pilot projects in late 2001. These projects were intended as test cases for permit reform ideas generated by the subcommittees and TPEAC, including coordinating multi-agency reviews of permit applications, coordinating public hearings, and integrating local reviews and permitting. An eight-step streamlined model specified in law provided a basic framework, and three projects were selected to test streamlining efforts based on factors such as funding considerations, sensitive environmental issues, and key elements.

[12] Data source: Doug Dobkins, King County Department of Development and Environmental Services, email dated 5/20/03.

The pilot project selected to illustrate rural corridors key to economic vitality was the Hood Canal Bridge (SR 3) Replacement Project, which incorporates several facilities. The bridge replacement itself (east-side replacement; west-side retrofit), passenger-only ferry facilities at Port Gamble and South Point, and parking facilities made up the original project description. Later in the permitting process, discussions resulted in adding to the project definition a new pontoon graving dock at Port Angeles. As a major rural connector, the Hood Canal Pilot Project also faces challenging salmon and stormwater issues.

TPEAC contacted county and city governments in the project vicinity, notifying them of the designation and inviting them to participate in the coordinated permitting process, either as a participant or by assigning their permit responsibilities to WSDOT. Project funding was available to reimburse local governments for the costs of permit issuance and process participation.

Recognizing the project's sensitivities, complexities, and WSDOT's desire for streamlining, an interdisciplinary team (IDT) was formed, beginning its efforts in March 2002. WSDOT completed a project environmental assessment (EA), which resulted in a Finding of No Significant Impact (FONSI) quite early in the process, prior to ESA Section 7 consultation. The FONSI was conditioned based on later ESA Section 7 consultation.

The IDT allowed most relevant permitting agencies to learn early about the project, jointly consider issues of common interest, and agree on approaches that would meet multiple objectives. Jefferson County was unable to participate due to resource constraints, but most of the other agencies participated consistently throughout the IDT process. To date, more than 20 IDT meetings have been held, at least monthly.

The IDT agreed to use a single-application process, and the JARPA application was selected for this purpose. IDT members who actively participated were involved in an iterative review process on the draft JARPA, sharing review comments and resolving issues. By July 2002, the JARPA was thought sufficient to begin permit applications, although it was subsequently revised. As noted below in permit-specific analyses, agencies found the JARPA met many of their information and application needs. Most also needed some other form of unique information, formats, or considerations that added to the basic JARPA package. Nevertheless, the process of multi-agency negotiation of the JARPA contents helped familiarize participants with the information and move the process forward from a common baseline.

Late in 2002, WSDOT determined the need to add a new graving dock in Port Angeles to the project definition because it would be integral to the project's implementation and would have impacts that needed to be assessed. A separate JARPA was developed and reviewed by all IDT participants, allowing discussion and refinement in advance of permit applications. The graving dock was handled separately in permitting, except in the case of ESA Section 7 consultation, which considered all elements as one project.

It is informative to compare the Hood Canal experience to the statutory processes and timeline described and shown in Section 3 of this document. Figure 5 illustrates the Hood Canal Pilot Project permitting timeline. The sections below describe the project's actual experiences with each permit process, both for the bridge (with associated ferry terminals and parking) and the graving dock.

A. HYDRAULIC PROJECT APPROVAL

Washington State Department of Fish and Wildlife (WDFW)

The HPA application for the bridge and ferry terminals, in the form of the JARPA, was the first submitted after the IDT completed its JARPA preparation. Application was made August 9, 2002, and a first draft permit received August 16. Seven draft permits with conditions were exchanged between WSDOT and WDFW, who worked together in a collaborative permitting process. The 45-day review period for WDFW was started and stopped at WSDOT's request to accommodate for permit revisions, draft permit review, and issue resolution. IDT discussions took place regarding mitigation, and agency management in WSDOT and WDFW participated in resolving mitigation issues. The permit was issued to WSDOT on December 26, 2002, within the official 45-day agency review period.

Total Elapsed Time: 4.5 months total, no appeal (permit approval was granted within the 45-day statutory review period given WSDOT's requests to suspend the "official" clock.

The HPA application for the graving dock was submitted on January 17, 2003, and revised January 29. Mitigation issues were again a focus of discussion, and a first draft permit was sent to WSDOT on January 30. Again, multiple drafts of the permit allowed WDFW and WSDOT to collaborate throughout the permitting process. The approval was finalized on March 17, 2003, triggering WDFW's 30-day appeal process. An appeal was received from a group of shipyard parties on the 30th day, and is currently under consideration by the agency.

Total Elapsed Time: 2 months to issuance (permit approval was granted within the 45-day statutory review period given WSDOT's requests to suspend the "official" clock); pending resolution of appeal in June 2003

C. SHORELINE SUBSTANTIAL DEVELOPMENT PERMITS

City of Port Angeles

WSDOT submitted the shoreline substantial development application for the graving dock to the City of Port Angeles in the form of the JARPA. The application was submitted on December 24, 2002, and exemption was issued by Port Angeles on January 23, 2003, and forwarded to Ecology for filing. On February 14, 2003, Ecology issued its filing letter. During the 21-day appeal

Figure 5: Hood Canal Pilot Project Timetable – Bridge, Ferry Terminals, and Graving Dock

window, WSDOT appealed some of the locally-imposed conditions. The appeal was settled on March 4, 2003.

Total Elapsed Time: 2.5 months, with WSDOT appeal

D. SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT AND SHORELINE EXEMPTION

Kitsap County

WSDOT also applied for its shoreline permits from Kitsap County (IDT participant) on August 9, 2002. The ferry terminals required a shoreline substantial development permit, and the bridge required a shoreline exemption. Kitsap County approved the shoreline exemption on October 16, 2002, and the development permit on December 10, 2002. Both were sent to Ecology for a 21-day review. Ecology's filing letter was received.

Total Elapsed Time: 4 months, no appeal

E. COASTAL ZONE MANAGEMENT CONCURRENCE

Washington State Department of Ecology (Ecology)

WSDOT used the JARPA to apply to Ecology for its coastal zone management consistency determination on July 3, 2003, preceded by IDT discussions. The determination statement form was received December 30, 2002, subject to Section 401 conditions.

Total Elapsed Time: 5 months

For the graving dock, WSDOT applied for a coastal zone management consistency determination on January 10, 2003. Concurrency was granted in concert with conditional 401 Water Quality Certification on May 29, 2003.

Total Elapsed Time: 4.5 months to date; 30-day appeal period to end June 29, 2003

F. CLEAN WATER ACT SECTION 404 NATIONWIDE PERMIT 15

U.S. Army Corps of Engineers (Corps)

The Corps asked that three separate applications be submitted: a NWP 15 to cover bridge construction (identified by the IDT and through other discussions between WSDOT and the Corps), and two separate Section 10 letters of permission for the ferry terminals. Section 10 letters of permission, rather than 404 permits, were issued because the ferry terminals were temporary structures. A letter requesting WSDOT to modify the application was received on October 21, 2002, and the agency initially applied under Section 10 on October 24, 2002.. WSDOT applied again on December 23, 2002, for the two Section 10 letters of permission, and

notice has been received that the letters will be issued. WSDOT applied for the NWP 15 permit on January 28, 2003, and the Corps is waiting for the Coast Guard to issue its Section 9 permit before issuing the nationwide permit approval.

Total Elapsed Time: 7 months to date; not yet issued

During November and December, WSDOT discussed the JARPA for the graving dock with the IDT and the Corps . Application for a 404 individual permit was made January 8, 2003, with mitigation plans submitted March 12. Corps comments went to WSDOT and were responded to in April 2003. During that time, the Corps also requested additional alternatives analysis for the graving dock location selection, which is required as part of a complete application. WSDOT submitted that supplemental information on May 9, 2003. The Corps wanted to review the Services' biological opinion before making a permit decision.

Total Elapsed Time: 4.5 months to date; not yet issued

G. CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION

Washington State Department of Ecology (Ecology)

Coast Guard Public Notice for the Section 9 permit triggered the Section 401 permitting process for the bridge and ferry terminals. Ecology received the JARPA when it went to all agencies. Water quality issues were the focus of the discussion, as well as bridge stormwater management and spill management. The permit was issued on February 26, 2003.

Total Elapsed Time: 4 months

For the graving dock, the Section 401 process was triggered by the Corps 404/10 permit application on January 8, 2003. Issues focused on contaminated soils, dredging of wood waste and uncharacterized sediments, and dissolved oxygen. The permit was issued on May 29, 2003.

Total Elapsed Time: 4.5 months to date; 30-day appeal process to end June 29, 2003

H. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT

Washington State Department of Ecology (Ecology)

WSDOT applied for the General Construction NPDES permit for the bridge and ferry terminals on August 8, 2002, after discussion and JARPA development in the IDT. The permit was issued on September 23, 2002.

Total Elapsed Time: 1.5 months

For the graving dock, WSDOT briefed Ecology in the JARPA contents. Application through a Notice of Intent was made January 17, 2003, and WSDOT published public notice on January 29 for a General Construction NPDES permit. Issues included stormwater management and pollution prevention. A stormwater management plan was developed and submitted to Ecology. Comments were received on February 14, 2003, and responses were submitted on March 7, 2003. Remaining issues regarding dioxin and chemical treatment were resolved with a staff-level meeting in early April, and the permit was issued on April 8, 2003.

Total Elapsed Time: 3 months

I. RIVERS AND HARBORS ACT SECTION 9 PERMIT

U.S. Coast Guard

Section 9 requirements pertained to the bridge and ferry terminals. WSDOT made application November 29, 2000, the earliest of all of the permits. The Coast Guard is waiting to issue its final notice pending other permit approvals (e.g., 401 water quality certification). Two weeks are required after receiving those approvals for Coast Guard issuance of approval.

Total Elapsed Time: 2.5 years to date; not yet issued, but essentially approved

J. ENDANGERED SPECIES ACT SECTION 7 CONSULTATION

NOAA Fisheries and U.S. Department of Fish and Wildlife (the Services)

One biological assessment (BA) and biological opinion (BO) were prepared for the entire project, including the graving dock. The BA was submitted on May 21, 2002. It required two addenda, and was revised to add the graving dock on January 1, 2003. That started formal consultation, and other addenda were submitted. Draft conditions were received by WSDOT from the Services on February 18, 2003, which allowed WSDOT to advertise the bid for the project. The BO was issued on May 5, 2003.

Total Elapsed Time: 12 months

K. LESSONS LEARNED FROM HOOD CANAL PROJECT EXPERIENCES

A forthcoming survey and summary report evaluating the IDT process will assess the successes and challenges faced during the Hood Canal Pilot Project. Although evaluating the IDT process is beyond the scope of this paper, the IDT was convened with the objective, in part, to conduct concurrent agency review. General insights can be drawn from the projects' results to broaden overall thinking about concurrent agency review, although these observations will be expanded upon, and in some cases superceded by, results of the IDT survey.

Analysis of the Hood Canal Pilot Project process to date shows several findings from the applicant's perspective:

The IDT achieved significant benefits by creating a uniform basis of project understanding: Participation in the IDT by most of the pertinent permitting agencies was beneficial, as it allowed early and joint presentation of approaches, information, and evolving issues. In the case of Jefferson County, which did not participate, the preapplication process allowed for early agency consultation. Staff turnover in some agencies meant that the IDT was not always as efficient as it could have been, and a few agencies were not able to participate to the level they had planned**.** Overall, however, the IDT served as a useful point of departure for concurrent agency review.

The IDT improved the effectiveness with which WSDOT and permitting agencies could address project modifications: Inclusion of the graving dock fairly late in the process added time to the overall process. Had the dock been identified at project inception, it could have been handled as part of the project from the beginning, though separate applications would still have been required due to its differing location and function. However, because the IDT had worked through the bridge and ferry terminal permitting process together, the agencies were likely able to process the graving dock information more efficiently. Many projects encounter unforeseen modifications and changes, and the IDT process likely expedites agency review of these changes by creating a more efficient, collaborative permitting approach from the outset.

Non-uniform information requests across agencies creates a streamlining challenge: Use of the JARPA provided a common discussion format and starting point that proved valuable in familiarizing participants with project information, and helped IDT members recognize the requirements unique to their agencies. Although JARPA serves as a complete application for many smaller-scale projects, for a project as large and complex as the Hood Canal Pilot Project, almost every agency required additional information or different application formats to satisfy statutory and regulatory requirements. While serving as a valuable baseline for large and complicated projects, creative thought about how JARPA could be supplemented or modified would be valuable to the streamlining discussion. For example, agencies could create lists of data and format requirements specific to their regulatory needs to guide applicants in the preparation of their application materials. While specific streamlining benefits gained through the use of JARPA were minimal, the application format did facilitate discussion and serve as a common baseline for agency collaboration.

Staff turnover created permitting delays: Using the Hood Canal Pilot Project IDT process as an example, it appeared that IDT progress was sometimes slowed due to staff turnover. This observation indicates that successful streamlining efforts should seek to improve institutional memory among participating agencies. Through the creation of tools that help guide IDT-like processes, as well as facilitate effective sharing of project information during staff transitions, additional time might be saved during concurrent agency review periods.

The high level of focus on the Hood Canal Pilot Project likely artificially expedited the permitting process: Due to the Hood Canal Project's high visibility and the commitment by agencies on the TPEAC committee, it is likely the project received special treatment over the life of this experience. When confronted with the reality of staff and resource limitations, it is unlikely a similar project would garner the same kind of attention and fast turnaround.

6. OPPORTUNITIES FOR POTENTIAL STREAMLINING AND RECOMMENDED ACTIONS

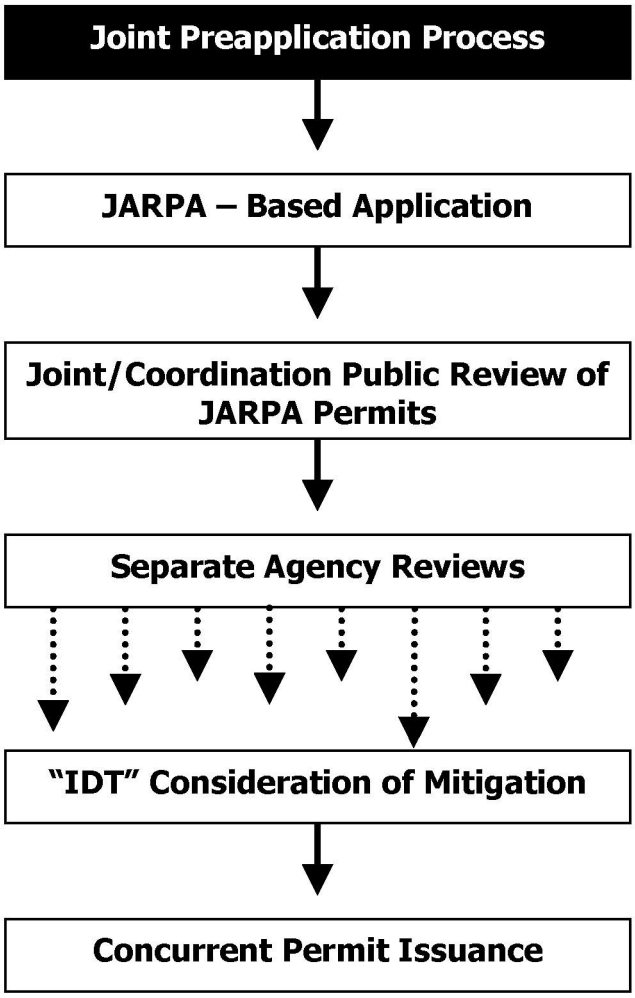
The goal of this white paper is to assess opportunities to streamline WSDOT's project permitting, making the process more efficient through:

- Concurrent agency review of permit applications
- Concurrent public review and comment on applications
- Concurrent appeal processes
- Defining complete application needs and information/data needs for each agency

Based on data gathered and analyses described in previous sections, There are some areas that could benefit from a coordinated or concurrent permitting approach. Figure 6 (next page) illustrates the basic process that incorporates a set of efficiencies and concurrent reviews that are recommended for further consideration. As shown, there could be a more coordinated process in several areas:

1. Encourage the Use of a Joint Preapplication Process. For projects of significant size, complexity, or urgency, consider conducting a joint preapplication process for all applicable federal/state/local permits. Only a few permits require formal preapplication (404 individual, shoreline and critical areas), but all agency regulators could benefit from (1) a consistent briefing/tour on project features and issues, (2) inter-agency discussion of permitting requirements and opportunities for coordination, and (3) improved communication between team members based on greater project understanding. Ultimately, completing up-front work to educate agency personnel and work through issues could potentially shorten the period of time agencies take to individually review permits within their jurisdictions. (Due to differing objectives, statutory and regulatory requirements, agency approval processes, and other factors, each agency will likely need to maintain current internal reviews processes.)

Figure 6: Potential Coordinated / Concurrent Review Opportunities



Staff from WSDOT's Eastern Region note that east of the Cascade Mountains, the lower level of environmental complexity for average construction and maintenance proposals make on-site preapplication meetings a normal and valuable practice. When approaching culvert replacements, bridge scours, and widening proposals in sensitive areas, field reviews are scheduled by WSDOT environmental staff with the Corps, WDFW, USFWS, Ecology, and often tribal staff to discuss water quality issues, the adequacy of mitigation, and construction or maintenance techniques that would limit negative environmental impacts. Eastern Region staff favor preapplication reviews and field visits as a usual way of doing business and emphasize the importance of continuing this practice with regulatory counterparts.

The subcommittee members caution, however, that preapplication activities should not limit public access to the overall process. While recognizing the value of educating agency personnel and facilitating inter-agency cooperation and collaboration, if significant project decisions are being made during the preapplication process that warrant public input, attempts should be made to insure that those outside the official IDT process (e.g., citizens in the project vicinity, Tribes, etc.) are given adequate and meaningful opportunities to participate. Moving toward a more cooperative preapplication process might in fact help agencies think more creatively about public outreach approaches (i.e., poorly attended public meetings do not necessarily mean that people are not interested – perhaps there is a better way of engaging the public through more meaningful methods).

2. Explore the Possibility of Coordinating Joint Public Review Processes. Not all permits considered require formal public notice, review, and comment. For example, HPAs are issued without public review. Local permits (focusing on shorelines and critical areas) usually undergo a joint local-level public comment process. Coast Guard permits and 401 Water Quality Certification, as well as Individual 404 and 402 permits, also usually employ a joint public comment process. For the remainder, however, and potentially for the local permits as well, a coordinated and/or joint public review process might be helpful. This would resemble the combined NEPA/SEPA public review process many agencies implement, where public notice is combined, joint review forums (meetings, posted documents) are made available to the public and stakeholders, and combined comments are received for analysis by each permitting agency.

The clear benefit of this approach is to allow interested citizens a one-stop opportunity to provide input on the project's permits, avoiding confusion and the potential for people to miss key permit comment periods. For agencies, it would require a coordinated planning and documentation approach, but could result in efficiencies in staffing and analysis of comments. Some local requirements (e.g., local jurisdictions' requirements for posting notices on project sites) may need to be addressed separately. Following analysis of public comments, an IDT could convene to consider any needed changes in response.

Staff from the Eastern Region believe that steps to consolidate public notice and meetings would make sense based on their perception of the purposes served by outreach in their area. Staff find that the public generally welcomes improvements to the transportation system. As a general rule, the public review and comment periods in Eastern Washington are more often an informative interchange between agencies and the general public to ensure an up-to-speed and educated community, rather than an attempt to reshape or redirect improvement proposals (i.e., the public rarely attempts to limit projects through litigation).

One local-level mechanism already exists to help consolidate public comment periods. The Growth Management Act allows an applicant to request one public hearing for multiple permits, which can help the applicant and oversight agencies save resources and provide a more comprehensive opportunity for public involvement and input. A similar, cross-jurisdictional mechanism could be explored that offered an applicant the opportunity to request a coordinated

public hearing covering local, state, and federal permitting requirements. In this way, agency staff from different levels of government could be present to respond to questions and concerns collectively, thus improving the effectiveness with which the public could be engaged and educated at meetings.

Conversely, the subcommittee members again cautioned that consolidating public comment opportunities could in fact limit public involvement and lead to delays. Staggered comment opportunities not only give community members several chances to attend meetings, but also can serve a beneficial purpose by:

- Providing an iterative communication process that builds community trust by demonstrating project team responsiveness.
- Reducing the likelihood of litigation – and serious project delays – at the end of the process by resolving issues over time, not with a one-shot approach that could fail.
- Reducing delays by gradually shaping the project's direction, as opposed to discovering a point of contention at the end of the process – potentially resulting in application revisions – that could have been discussed and resolved through an iterative public involvement process.

3. Explore Convening an "IDT-like" Process to Review and Negotiate Mitigation Activities. The category of issues that would likely benefit from joint agency consideration is mitigation. Most agencies involved in a particular project need to consider mitigation options and feel comfortable about WSDOT's mitigation plans, as well as understand other agency's mitigation requirements. One activity that could facilitate joint review and negotiation of mitigation measures would be to convene relevant agency personnel (perhaps even reconvene the original IDT) during the agency review process. The complexity of a particular project would determine if a meeting (or series of meetings) to discuss mitigation were warranted. Results could then be incorporated into the evolving permits and their conditions, and agencies would have another opportunity to coordinate issues and timelines as they move forward.

4. Concurrent Permit Issuance Should be Explored. In practice, many permits are held today until other, longer-timeframe permits have been approved. For example, ESA Section 7 consultation often takes the longest of permit approvals to obtain, and agencies can be required to hold (or condition) their permits to ensure cross-permit consistency. This recommendation would standardize that practice, allowing for concurrent issuance of all – or some – project permits, although this could require changes to CWA and CZMA. To accomplish concurrent permit issuance, WSDOT and other agencies would need to coordinate timeframes, but in so doing might provide opportunities to simplify the public review process and allow concurrent consideration of key project information.

The subcommittee members also voiced arguments against concurrent issuance of permits, indicating the need to further explore this concept. For example, an HPA could be held to accommodate concurrent permit issuance if WSDOT requested that the 45-day review restrictions were suspended, but oftentimes early issuance of an HPA may facilitate other

permitting processes. Usually, the HPA is one of the first permits WSDOT receives, which can aid other permit review processes such as Section 7 consultation.

5. Opportunities for Concurrent Appeal Appear Limited. There appear to be few benefits to consolidating or modifying permit timelines to facilitate concurrent appeal processes. Permit appeal time periods are variable, appeals are often filed at different jurisdictional levels (local, state, and federal court), and in some cases there are no public appeals processes established save litigation through the courts. Appeal periods for different permits could potentially run concurrently if WSDOT agreed to extend permitting timelines or coordinated permit application dates to help synchronize appeal periods. However, the divergent appeal venues and subject matter covered under each permit indicate that attempts to create concurrent appeal processes may not be the best use of time or resources.

6. Explore or Expand Opportunities to Track Permitting Timeframes. As was revealed in the attempt to gather data about permit timelines, significant gaps exist in permit record keeping. As streamlining moves forward, encouraging the development (or consistent use) of permit databases with scheduling information will help the subcommittee create a firmer baseline against which to assess future success.

In addition to these recommendations on concurrent review, some key themes resulted from the analyses of the permitting processes:

- **Critical path timelines, requirements, and milestones need to be clearly defined at the beginning of projects.** The suite of permits required for individual projects vary considerably, and the interdependence of these permits should allow project teams to identify which will potentially be most time consuming to obtain. For example, based on research conducted for this white paper, ESA Section 7 consultation appears to be the critical path for many permitting processes. The biological assessment and biological opinion processes are time-intensive, and issues often arise that extend the schedule.

  By routinely identifying critical pathways, requirements, and key milestones for projects, project teams can attempt to develop proactive methods for expediting lengthier permitting processes. On a larger scale, if a particular permit appears to regularly cause overall project delay, a committee like TPEAC – intended to look at "big picture" permitting issues – might be convinced to, for example, advocate for the provision of additional resources to an understaffed agency. By focusing streamlining efforts on the roots of delays, both on an individual permit and programmatic level, critical paths may be shortened, and overall permitting expedited.

- **Define contractual expectations and roles at the outset of IDT-like processes.** Mutual understanding of and commitment to the IDT process will allow members to identify an appropriate and feasible level of participation, vest members in team outcomes, and serve as a tool to build trust among agencies.

- **As TPEAC considers streamlining opportunities, ensuring adequacy of staff resources, training programs, staff liaison positions, and communication mechanisms will be critical to success.** Permitting works well when sufficient levels of experienced staff collaborate with other professionals with whom they are familiar. Early and frequent communication tends to lead to better results, and having sufficient resources within the agency devoted to the job is critical. The reality of current local, state, and federal budget restrictions have created staff limitations that, in turn, can prevent rapid permit turnaround times for state and federal permitting agencies.
- **Programmatic approaches to resolving frequently arising issues offer promise in streamlining the permitting process.** Evolving ideas about programmatic permits, biological assessments, etc., should be encouraged and expedited for application to a broader range of WSDOT projects.
- **Consider developing complete application data/information lists to be agreed upon by the agencies.** To help facilitate the submission of complete applications, subcommittee members supported the idea of creating agency-specific lists of information and format requirements to guide an applicant's preparation of materials. Lists could be tailored to particular kinds of projects, and potentially appended to the JARPA format as a method to make the consolidated application form more complete for large, complex projects.

Next Steps

The subcommittee has already started thinking about the feasibility and appropriate locus for activities recommended in this document. As streamlining efforts move forward, the common themes identified above could also be prioritized and assigned to the appropriate committees or agencies for further discussion and/or implementation. For example, identifying a project's critical path could be included as part of an IDT guidance document created in pursuit of the first recommendation.

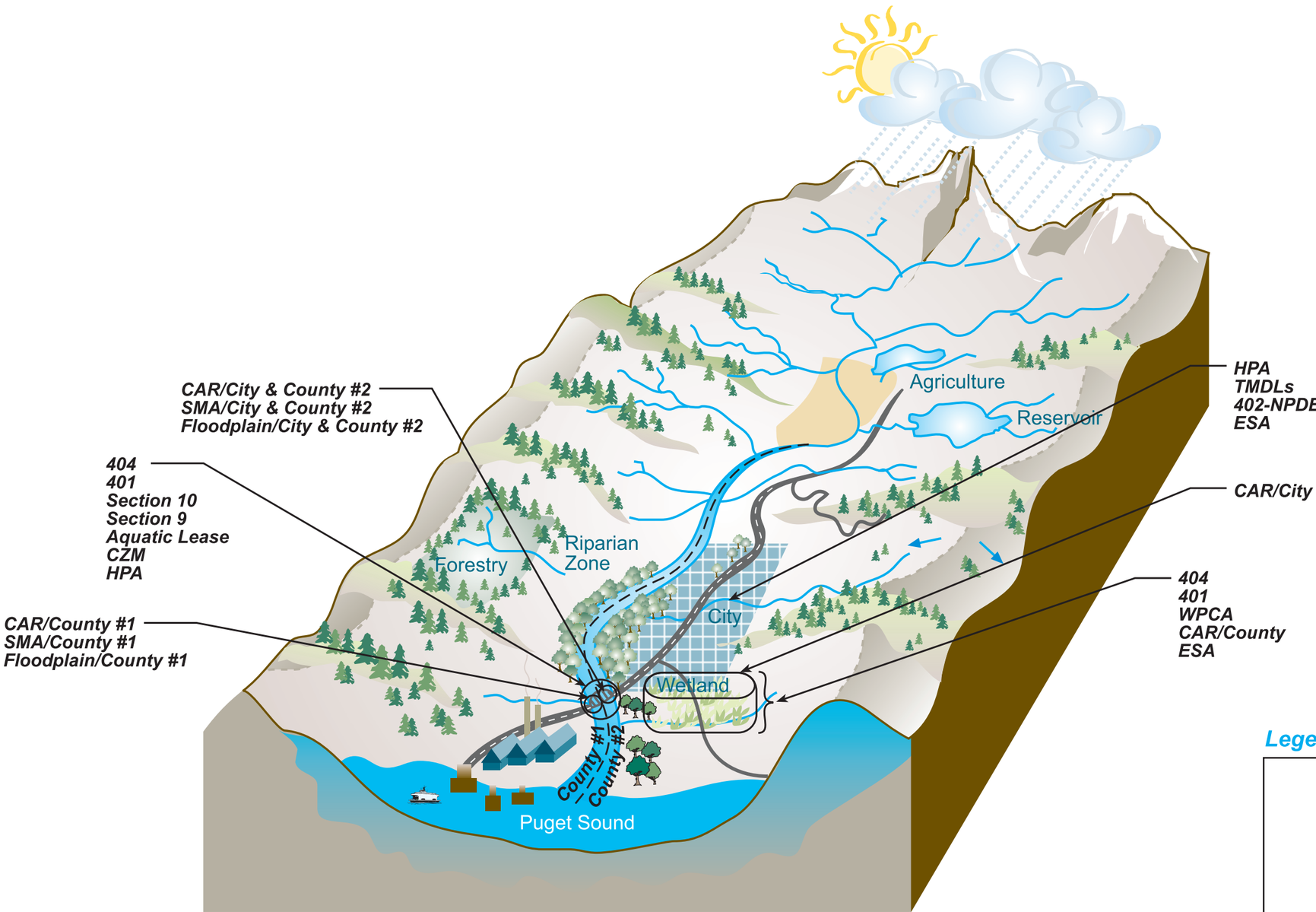
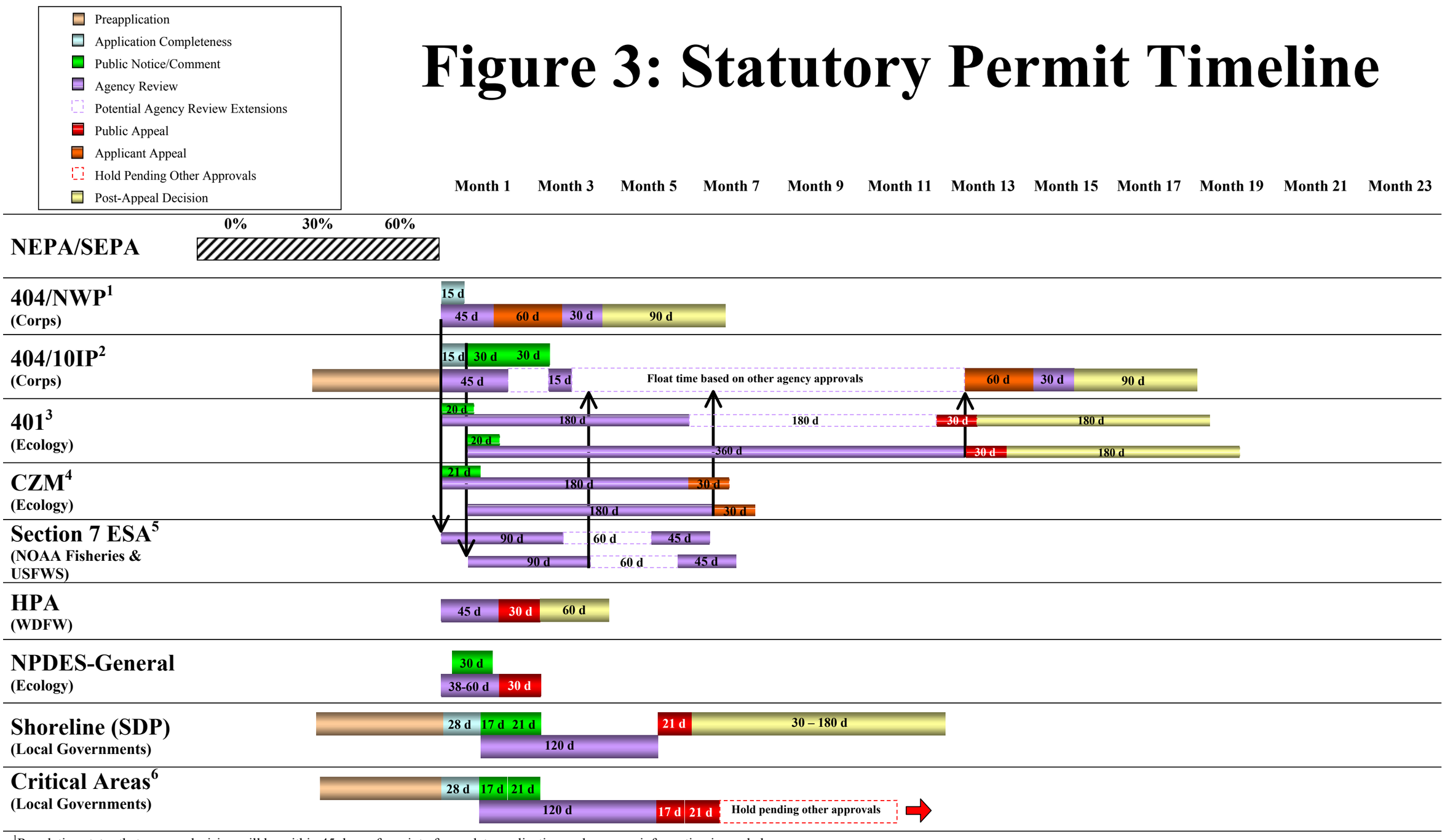


Figure 1: Hypothetical Bridge Replacement

Legend:

401	Section 401 Clean Water Act
402	Section 402 Clean Water Act
404	Section 404 Clean Water Act
CAR	Critical Areas Regulations
SMA	Shoreline Management Act
HPA	Hydraulic Project Approval
TMDL	Total Maximum Daily Load
NPDES	Non Point Discharge Elimination System
ESA	Endangered Species Act
WPCA	State Water Pollution Control Act
CZM	Coastal Zone Management Act
Section 9	Section 9 of Rivers and Harbors Act of 1899
Section 10	Section 10 of Rivers and Harbors Act of 1899
Aquatic Lease	DNR Aquatic Lands Easement

Figure 3: Statutory Permit Timeline



[1]Regulation states that agency decision will be within 45 days of receipt of complete application, unless more information is needed.
[2]Regulation states that agency decision will be within 60 days of receipt of complete application, unless the comment period is extended or more information is needed. Public comment period extension does not use agency review time (i.e., 30 day suspension).
[3]Regulation states that agency review schedule will be tied to federal permit application schedule. Regulation allows one year for permit review, but an agreement between the Corps and Ecology requires Ecology to process NWP within six months. Inaction on a NWP beyond six months is considered an approval. Public notice required only for individual 401 certification.
[4]Regulation states that agency concurrence or objection to federal consistency determination within 180 days if federal approval needed of federal funding used.
[5]Regulation states that consultation process should conclude within 90 days unless applicant has consented to 60-day extension. Consultation period can be further extended with applicant consent. (Services have additional 45 days for preparation of Biological Opinion)
[6]Local jurisdiction can approve permit upon close of appeal process, but can hold issuance until other related approvals (e.g., HPA, Corps, NPDES) are received.

Figure 4: Typical Permit Timeline

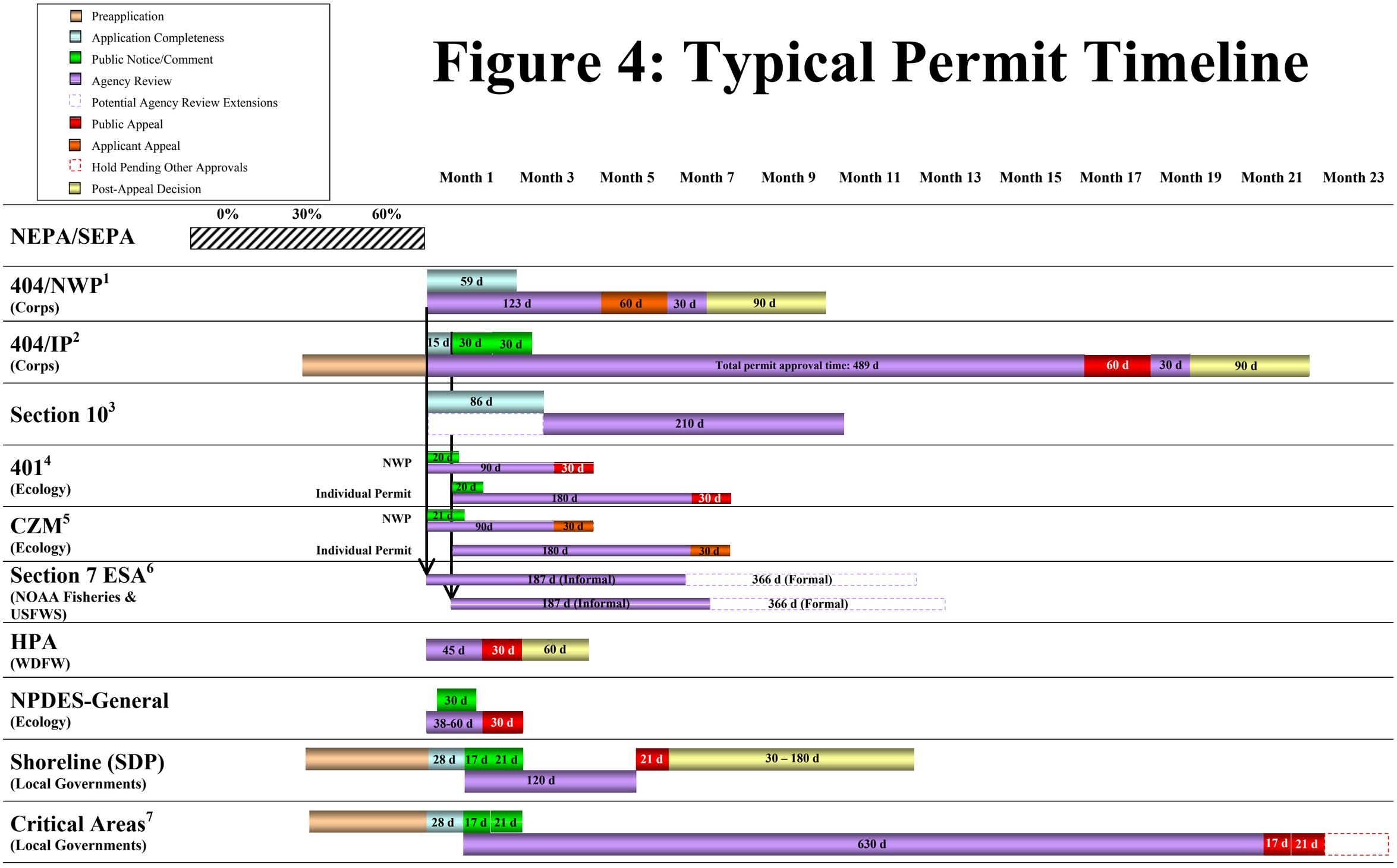
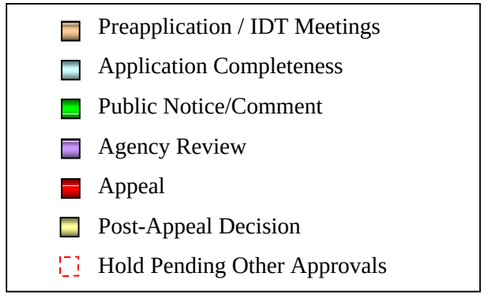
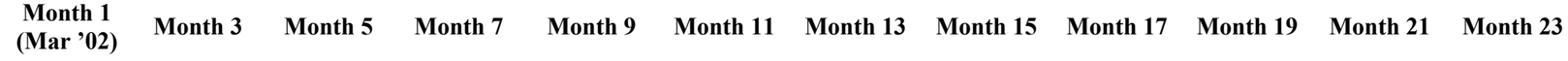
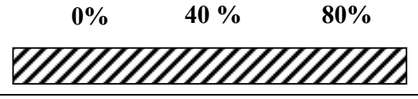


Figure 5: Hood Canal Pilot Project Timeline – Bridge, Ferry Terminals, and Graving Dock

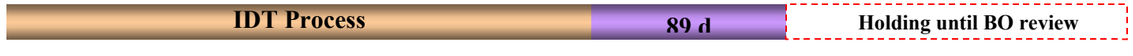




NEPA/SEPA



404/NWP
(Corps – Bridge)



404/IP
(Corps – Graving Dock)

Section 10
(Corps – Ferry Terminals)

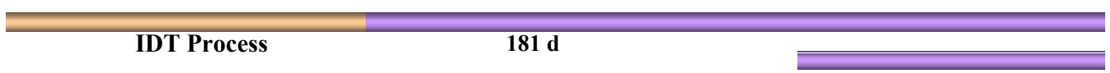
Section 9
(U.S. Coast Guard)

401
(Ecology)

Bridge and Ferry Terminals
Graving Dock

CZM
(Ecology)

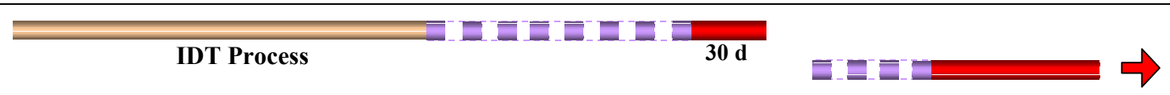
Bridge and Ferry Terminals
Graving Dock



Section 7 ESA
(NOAA Fisheries & USFWS)

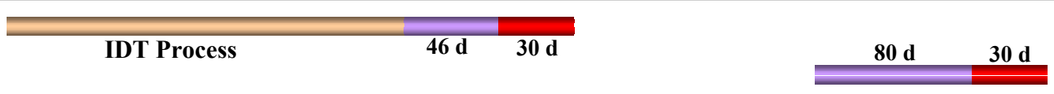
HPA
(WDFW)

Bridge and Ferry Terminals
Graving Dock



NPDES - Const.
(Ecology)

Bridge and Ferry Terminals
Graving Dock



Shoreline
(Local Governments)

Kitsap Co. Bridge Exemption
Jefferson Co. Bridge Exemption
City of Port Angeles SDP